IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 1741 of 2005

Between:

E.Ramesh S/o Sri E.Mankayya
C-25, N.I.R.D.Camps Rajendranagar, Hydeabad-500 030

..... PETITIONER

AND

1 National Institute of Rural Development Rajendranagar, Hyderabad. 500 030
Represented by its Director-General.
2 Registrar National Institute of Rural Development
Rajendranagar, Hyderabad.-500030

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or directions restraining the respondents from proceeding further with disciplinary proceedings under charge-memo No.Admn.VC-1/2004/216 dt. 11/10/204 issued by the 2nd respondent herein.

Counsel for the Petitioner: MR.G.RAMACHANDRA RAO

Counsel for the Respondents: MR.L.RAVICHANDER

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 1741 of 2005

O R D E R:

Challenging the charge memo No.Admn.VC-1/2004/216 dated 11.10.2004 issued by the 2nd respondent, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner submitted thesis in the year 2000 and the thesis was sent to three external experts for giving their consent for award of Ph.D. In the year 2000, he got Ph.D degree from the Osmania University. While so, one Dr. Kishore Vaswani gave a complaint to the Osmania University alleging that the petitioner had copied his thesis submitted to Pune University in the year 1982. A committee was constituted by the Vice Chancellor to enquire into the matter. The petitioner admitted his mistake in using some material from the thesis submitted by Dr. Kishore Vaswani, duly expressing his regrets. He was penalized by the Osmania University by canceling his Doctorate in Philosophy degree given to him in the year 2000 and the respondents were directed to withdraw the cash incentives given to him. There upon the 2nd respondent issued a major penalty charge memo dated 11.10.2004 as he failed to maintain absolute integrity and conducted himself in a manner unbecoming of an employee of the Institute and contravened Rule 3(1)(i) & (iii) of National Institute of Rural Development Employees (Conduct) Rules. The charge memo was given without application of mind and solely on the directions given by the Osmania University. He submitted an explanation. It is stated that the 2nd respondent has no power to impose major penalty to the employees. Without considering his explanation, the 2nd respondent herein appointed an Enquiry Officer. The Enquiry Officer issued a notice. Then he made a

representation to permit him to engage a legal practitioner but the same was rejected. According to the petitioner, the charge leveled against him does not amount to any misconduct under the Rules as applicable. Hence the present writ petition.

A detailed counter affidavit has been filed by the respondents stating that the National Institute of Rural Development (hereinafter referred to as 'NIRD')is the country's apex body for undertaking training, research etc. It has its own service bye-laws, rules, conduct rules etc., framed mainly keeping in view the Government of India orders/circulars issued from time to time. The petitioner allied for permission to pursue Ph.D and for six months study leave and the same was granted. After completion of Ph.D he was granted incentive of Rs.4,000/-. The Registrar, Osmania University vide letter dated 9.3.2004 intimated that the report of the Committee constituted by the Vice Chancellor in connection with the complaint from Dr. Kishore Vaswani regarding copying of his Ph.D by the petitioner was considered by the standing committee and resolved to withdraw the award of Ph.D. degree and to award suirable punishment. Keeping in view the letter received by the Osmania University, a charge memorandum dated 11.10.2004 was issued. Permission to engage legal practitioner was rejected as no provision was available. The charge was issued in accordance with the rules and as per the bye-laws the Director General is the appointing authority for all Group B, C and D posts. The charge sheet was issued by the Registrar and Director (Administration) by invoking the provisions of Rule 13 of CCS (CCA) Rules and accordingly the charges were framed. Hence the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner raised three contentions in this writ petition. Firstly, that the 2nd respondent denied to engage a legal practitioner to represent the petitioner's case during the enquiry; secondly, that the 2nd respondent herein has no power or authority to issue the charge memo to the petitioner under 14 of the Central Civil Services (Classification, Control & Appeal) Rules,

1965 (for short, 'CCA Rules') and those rules are not applicable to the employees of the 1st respondent and, thirdly, that without proper application of mind the charge sheet has been issued and the charges leveled against the petitioner are nothing to do with his discharge of duties as an employee. Therefore, he prays to set aside the impugned proceedings.

On the other hand, learned counsel for the respondents contended that the rules or the bye-laws governing the service conditions of the petitioner do not permit to engage legal practitioner. As the petitioner failed to maintain absolute integrity and conducted himself in a manner unbecoming of an employee, after consideration of the material on record about the misconduct a charge memo ws issued and as per Rule 13(2) of the CCA Rules the 2nd respondent is competent to issue charge sheet and hence there are no grounds to interfere with the impugned order.

The petitioner after applying study leave from 1.5.1997 to 31.10.1997 for permission to pursue Ph.D was granted permission and thereafter he also obtained Ph.D from the Osmania University. A lump sum incentive of Rs.4,000/- was also granted. The Registrar, Osmania University vide proceedings dated 9.3.2004 intimated the report of the committee constituted by the Vice Chancellor of the Osmania University in connection with the complaint from Dr. Kishore Vaswani regarding copying of his Ph.D by the petitioner was considered by the standing committee of the Academic Senate on 13.2.2004 and, inter alia, it was resolved to withdraw the Ph.D with retrospective effect. Basing on the said proceedings, a charge memo dated 11.10.2004 under Rule 14 of the CCA Rules was given. The petitioner filed a representation on 5.1.2005 to the 2nd respondent to permit him to engage a legal practitioner, but the same was rejected. On this aspect, the delinquent has no enforceable right to engage a legal practitioner to represent his case during the enquiry. If there are any bye-laws permitting an employee to engage an advocate, then it would be a different matter. No such bye-law is brought to the notice

of this court to show that the delinquent employee can engage a legal practitioner to defend his case in the departmental enquiry. Therefore, the contention of the petitioner is devoid of merit.

With regard to non-application of mind, the substance of the imputations or misconduct or misbehaviour of which the enquiry is proposed has been enclosed to the charge memo in Annexure-II. The petitioner while working with the respondents obtained study leave for the purpose of prosecuting Ph.D degree. After he got the Ph.D degree, the same was submitted to the respondents on the basis of which the respondents awarded a cash incentive to the petitioner. Therefore, on this aspect it is for the Enquiry Officer to submit a report whether it is a misconduct or misbehaviour and it is not desirable for this court to express any opinion on this aspect because it is exclusively within the domain of the Enquiry Officer. After considering the entire material on record, the Registrar issued the memorandum dated 11.10.2004. Therefore, it cannot be said that it was issued without application of mind.

The main ground of attack of the learned counsel for the petitioner is that the 2nd respondent is not the authority to issue a charge sheet. As per bye-law No.56(a), in respect of all officers and staff in Group B, C and D, the Director General can impose all the penalties. But in respect of minor penalties, Dy. Director General, Registrar, Faculty Head are the competent persons. Minor penalties and major penalties are described under Rule 56. Censure, recovery of pay, withholding of increments are the minor penalties. Reduction to a lower stage in time scale of pay, compulsory retirement, removal from service, dismissal from service are the major penalties.

Explanation to bye-law 56 reads “Classification, Control and Appeal (CCA) Rules applicable to Government of India employee as amended from time to time be adopted by the Institute, insofar as procedure for conducting of disciplinary proceedings is concerned”. Basing on the said explanation the learned counsel for the petitioner vehemently contended that the procedure for

conducting of disciplinary proceedings is only applicable but not the substantive powers of the disciplinary authorities. On the other hand, learned counsel for the respondents placed strong reliance on Rule 13(2) of the CCA Rules, which reads as follows:

> "A disciplinary authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 11 notwithstanding such disciplinary authority would not competent under these rules to impose any of the latter penalties".

Clauses (i) to (iv) of Rule 11 are censure, withholding of promotion, recovery of pay, reduction to the lower stage and withholding of increments. Whereas, the major penalties of Rule 11 are, reduction to the lower stage in the time-scale, compulsory retirement, removal and dismissal etc. A plain reading of this Rule would go to show that the disciplinary authority who is competent to impose minor penalties may institute disciplinary proceedings for imposition of major penalties notwithstanding such authority is not competent under these rules to impose any of the major penalties. If this rule applies to the case of the petitioner, then there would not be any difficulty for initiation of disciplinary proceedings against the petitioner, because the 2nd respondent who is the competent authority to impose minor penalties can also institute disciplinary proceedings for the imposition of major penalties notwithstanding that he has no authority to impose major penalty.

Now it has to be seen whether Rule 13(2) of the CCA Rules is applicable to the case of the petitioner?

It is not disputed before this court that the CCS (CCA) Rules applicable to the Government of India as amended from time to time are adopted by the NIRD. But, the learned counsel for the petitioner contended that in view of explanation given to bye-law 56, the CCA Rules are applicable insofar as the procedure for conducting of disciplinary proceedings only.

On the other hand, learned counsel for the respondents contended that the conduct of disciplinary proceedings commences from the date of issuance of charge sheet and therefore in this case as soon as the charge memo is issued the disciplinary proceedings will commence and hence Rule 13(2) of the CCA Rules would apply to the case of the petitioner. The charge memo was issued by the Registrar (Administration) i.e. the 2nd respondent herein. Admittedly the Registrar is empowered to impose minor penalties in respect of Group B, C and D posts whereas the Director General is empowered to impose all penalties. As rightly contended by the learned counsel for the respondents, the disciplinary proceedings commences from the date of charge memo. Therefore, the procedure as contemplated in the CCA Rules would govern the disciplinary proceedings of the employees of the 1st respondent. On conclusion of enquiry and the report of the Enquiry Officer if the disciplinary authority comes to the conclusion that the minor penalty would meet the requirement of the case, it is well within the competence of the 2nd respondent to impose minor penalty without seeking the approval of the authority competent to impose a major penalty. If the 2nd respondent after consideration of the matter decided to impose a major penalty, then the same has to be referred to the competent authority, who is the Director General, for imposition of major penalty. Therefore, in my considered opinion, the CCA Rules are applicable insofar as the procedure for conducting of disciplinary proceedings is concerned. The disciplinary proceedings commences from the date of issuance of charge sheet and hence Rule 13(2) applies to the case of the petitioner. According to Rule 13(2) though the disciplinary authority is not competent to impose major penalty, still he can initiate disciplinary proceedings

because he is empowered to impose minor penalties.

Learned counsel for the petitioner placed reliance on a decision of the apex court in **Rajeshwar Singh v. Union of India** wherein it is held:

> Where the employee is governed by one set of rules in the matter of disciplinary proceedings but inquiry is held under another set of rules, such an inquiry would be violate of principles of natural justice and findings based upon such an enquiry cannot be upheld much less the punishment imposed in consequence of such findings. It would be no gain saying that there was not any material difference in two sets of rules".

However, that is a case where the services of the petitioner therein were governed by the Central Industrial Security Force Rules but a charge sheet was served on him under the CCA Rules. Therefore, under those circumstances it was held that the principles of natural justice have been violated. But in this case the facts are entirely different as the CCA Rules have been adopted by NIRD insofar as the procedure for conducting of disciplinary proceedings. Hence the above decision has no application to the present facts of the case.

From the above discussion, it is clear that the impugned proceedings do not suffer from any incurable legal infirmities so as to call for interference by this court. Without expressing any opinion with regard to the merits and facts of the case, the writ petition is dismissed leaving all the contentions raised in this writ petition open.

K.C. Bhanu, J.

Date: 25--03—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 National Institute of Rural Development Rajendranagar, Hyderabad. 500 030
Represented by its Director-General.
2 Registrar National Institute of Rural Development
Rajendranagar, Hyderabad.-500030

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